



**Citizens' Environmental Awareness League**

**P.O. Box 30333  
Phoenix, Arizona 85046-0333**

August 17, 2001

Governor Christine Whitman, Administrator  
United States Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Ann Goode, Director  
Office of Civil Rights  
Ariel Rios Building  
200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: *Citizens Environmental Awareness League (CEAL) v Maricopa County  
Environmental Services Department*

Dear Governor Whitman and Director Goode:

The Maricopa County Environmental Services Department (MCESD) has violated Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's ("EPA") implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race in deliberately and intentionally **conducting** a public hearing regarding the issuance of an air pollution permit for Sumitomo Sitix of Phoenix, Inc. located at 19801 North Tatum Boulevard, Phoenix, AZ 85024 at a time when local affected area residents could not attend. All other public hearings for air pollution permits conducted by MCESD in all other parts of MCESD's jurisdiction, including communities of **color** and low-income communities, have been conducted at times that were conducive to public attendance and participation, i.e. with hearings starting at **7:00PM** on weekdays.

The local population proximate to Sumitomo Sitix of Phoenix, Inc. is overwhelmingly middle class whites. In areas of the MCESD's jurisdiction that consist of minority and low-income populations, air pollution permit public hearings have all been conducted starting at **7:00PM** on weekdays, and have never been conducted starting at **4:00PM** and ending at **7:00PM** on a weekday. The hvo previous air pollution permit public hearings for Sumitomo Sitix of Phoenix, Inc. were also conducted starting at **7:00PM** on a weekday, but MCESD deliberately and intentionally set the time for its most recent public hearing (August 7, 2001) from **4:00PM** to **7:00PM** at the request of Sumitomo

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‘Sitix of Phoenix, Inc. Despite CEAL representatives contacting the MCESD regarding concerns about the time of the air pollution permit public hearing being not conducive to public participation, the time for the hearing was not changed.

In stark contrast to the two previous air pollution permit public hearings for Sumitomo Sitix of Phoenix, Inc., when over a hundred people attended and participated at each of them, at the **4:00PM to 7:00PM** air pollution permit public hearing on August 7, 2001, only about 30 people attended and participated. And unlike the previous two air pollution permit public hearings, the meeting room reserved for this most recent air pollution permit public hearing could only **accomodate** 30 people, further evidence that MCESD **knew** the time for the air pollution permit public hearing was not conducive to public participation. This afternoon air pollution permit public hearing time has caused a disproportionate, adverse effect upon a white community by effectively preventing their participation in an air pollution permit hearing. The public participation rights in air pollution permit hearings is set forth in the Clean Air Act, the Arizona and Maricopa County SIPs, as well as Arizona state statutes. Yet MCESD effectively blocked these public participation rights by deliberately and intentionally scheduling the August 7, 2001, air pollution permit public hearing for Sumitomo Sitix of Phoenix, Inc. from **4:00PM to 7:00PM**, knowing that the time was not conducive to public participation.

CEAL members, and other members of the public in this overwhelmingly middle class white community proximate to the Sumitomo Sitix of Phoenix, Inc. factory, have complained for years about smoke and chemical odors attributed to the Sumitomo Sitix of Phoenix, Inc. factory. A complaint about odors emanating from the Sumitomo Sitix of Phoenix, Inc. factory was lodged with MCESD even the same day of the August 7, 2001, hearing. The deliberate and intentional arrangement of the air pollution permit public hearing time to prevent public participation also had the effect of preventing more public testimony about continuing smoke and odor problems. Some attendees did speak about the continuing smoke and odors; but it is **CEAL's** contention that many more would have attended and spoken about the continuing smoke and odors if the time for the hearing had been set at the same time as other non-white and low-income communities have their air pollution permit public hearings.

This clear discriminatory action cannot be ignored by MCESD, and cannot be continued by the issuance of a new facility air pollution permit to the Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North **Tatum** Boulevard in Phoenix until there is a new air pollution permit public hearing conducted at a time actually conducive to public participation as is afforded other non-white and low-income communities.

## I. PARTIES

### A. Complainant

This complaint is being filed against MCESD by an organization with affected members, the Citizens Environmental Awareness League (CEAL). CEAL is an environmental

education and activist **organization** with many members in the **affected** area. CEAL itself is based in the **affected** area.

#### B. Respondent Maricopa County Environmental Services Department

MCESD is the county-level agency that is responsible for implementing, administering, and enforcing the **Maricopa** County SIP, which includes both Class II permits (non-Title **V**) as well as federal Title V air pollution permits, and Title VI of the Civil Rights Act of 1964. MCESD, as a recipient of federal funds from EPA, is subject to the requirements of Title VI of the Civil Rights Act.

### II. RIPENESS

This complaint comes as a result of a recently concluded air pollution permit hearing for the Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North **Tatum** Boulevard in Phoenix. The claim is timely tiled since the air pollution permit hearing was conducted on August 7, 2001.

### III. CONTEXT

Citizens Environmental Awareness League (CEAL) filed comments at the 1998 Sumitomo Sitix of Phoenix, Inc. air pollution permit hearing, and concurrently sent a Clean Air Act sixty-day citizen suit notice letter to Sumitomo Sitix of Phoenix, Inc. alleging many violations of permit conditions. MCESD intervened on the 59th day of the Clean Air Act sixty-day citizen suit notice, and eventually penalized Sumitomo Sitix of Phoenix, Inc. the largest amount in county air pollution permit enforcement history. CEAL also made comment at the August 7, 2001, Sumitomo Sitix of Phoenix, Inc. air pollution permit hearing, but did not make comments to represent all of its members who were unable to attend due to the discriminatory time set by MCESD for the Sumitomo Sitix of Phoenix, Inc. air pollution permit hearing.

The community adjacent to Sumitomo Sitix of Phoenix, Inc. (affected area) was established and occupied well before the factory was ever built, and has always been a white, middle-class community.

CEAL and **CEAL** members have consistently tiled citizens complaints about smoke and chemical and acid fume odors emanating from the Sumitomo Sitix of Phoenix, Inc. factory. CEAL and CEAL members have consistently commented at the two air pollution permit public hearings for Sumitomo Sitix of Phoenix, Inc. that were conducted after the factory began operations about continuing smoke and chemical and acid fume odors emanating **from** the Sumitomo Sitix of Phoenix, Inc. factory.

MCESD is required by federal and state statute to respond to comments before issuing an air pollution permit. The MCESD has claimed that its Hearing Board does not have the authority to hear appeals based **on civil** rights violations.

The MCESD also has issued and renewed many Class II air pollution permits for facilities in minority and low-income communities, and has never conducted the public hearing for these **from 4:00PM to 7:00PM** on a weekday. MCESD has a database of the facilities to which it has **granted** air pollution permits, and the times of any public hearings regarding the issuance of these air pollution permits, and therefore has complete knowledge of these air pollution permit hearing times.

## Claims

### A. Title VI

Title VI of the Civil Rights Act of 1964 provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from **participation in**, be denied the benefits of, or be subjected to discrimination under **any program or activity receiving federal financial assistance**. 42 U.S.C. § 2000d. (Emphasis added.)

MCESD, a recipient of federal financial assistance from EPA, has violated Title VI as implemented through EPA's regulations by conducting an air pollution permit hearing for the issuance of a Class II air pollution permits in this white, middle class community deliberately and intentionally at a time not conducive to public participation.

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title-VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

The permitting process, which includes the rights of the public to participation via comment **and/or** public hearings, is MCESD's method of discrimination, and this process of granting a permit to the Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North **Tatum** Boulevard in Phoenix is an extremely egregious example of its discriminatory practices. All complainants must show is that when applied in a particular manner, MCESD's "method of administering its program" yields a discriminatory outcome. As the following sections demonstrate, MCESD's method of administering its air pollution permitting program has resulted in discriminatory impacts throughout this white, middle-class community.

Although MCESD did not solicit the time for the public hearing for this permit (Sumitomo Sitix of Phoenix, the Applicant, did), it "chose" whether or not to agree to this

'discriminatory timeframe designed to prevent public participation. By deliberately and intentionally conducting the air pollution permit hearing for Sumitomo Sitix of Phoenix, Inc. at a time not conducive to public participation, MCESD has failed to meet its statutory duties under Title VI.

The effect of **MCESD's** air pollution permitting process is clear: white, middle class communities situated proximate to controversial facilities will be prevented, deliberately and intentionally, **from** participation in the "public" process, something that they have a right to.

By conducting this air pollution permit hearing for Sumitomo Sitix of Phoenix, Inc. deliberately and intentionally at a time when the public couldn't attend, MCESD has administered its program in such a way as to discriminate against people based on race, **color**, and national origin, in violation of Title VI.

#### Remedies

In order to provide effective remedies for the patterns of discrimination described in this complaint, the complainants request that EPA:

require that, as a condition of continuing to provide federal financial assistance, MCESD revoke its approval of the air pollution permit to the Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North Tatum Boulevard in Phoenix until and unless the MCESD conducts a properly-noticed air pollution permit hearing for the facility's air pollution permit at a time that is conducive to public participation and consistent with all other air pollution permit hearings that MCESD conducts;

require, as a condition of continuing to provide federal financial assistance, that MCESD withdraw any existing air pollution permits, and cease issuing any new air pollution permits, for new or expanded facilities in Maricopa County until it has a competent, credible, scientific method of determining it is not violating the civil rights of all communities;

. permit complainants to initiate and engage in active, collaborative investigation of the foregoing allegations, including the submission of written interrogatories to MCESD;

provide complainants with copies of all correspondence to or from the respondent throughout the course of the EPA's investigation, deliberation and disposition of this complaint;

. sue to compel compliance with the law, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual;

terminate its assistance to MCESD, pursuant to 40 C.F.R. §7.25, if MCESD fails to implement the above requested changes.

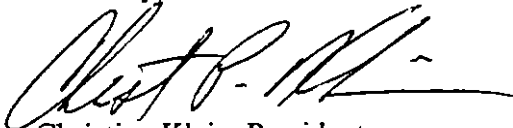
## Conclusion

As this complaint makes clear, the white, middle-class community adjacent to the Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North Tatum Boulevard in Phoenix was intentionally and deliberately discriminated against by MCESD by denying the community the same rights of public participation as afforded communities of **color** and low-income communities in MCESD's jurisdiction.

The discriminatory impact created and sanctioned by **MCESD's** actions is a clear violation of Title **VI** as implemented by EPA regulations. Because MCESD receives federal funding from EPA, it is subject to Title VI as implemented by EPA regulations. This complaint is timely tiled since MCESD took **final** agency action on this Sumitomo Sitix of Phoenix, Inc. factory located at 19801 North Tatum Boulevard in Phoenix in terms of conducting the air pollution permit hearing on August 7, 2001, less than 180 days ago.

We look forward to an active investigation by EPA. Please notify us promptly of the schedule for your investigation. Please direct correspondence to: Christian Klein, CEAL, [REDACTED].

Sincerely,

A handwritten signature in black ink, appearing to read 'Christ R. Klein', with a stylized flourish at the end.

Christian Klein, President  
CEAL